CF0000061589

G.A 13.11/97 (2) (10)

S.T. No. 92/94

APPEAL PRISONER

Division Bench (Criminal)

No. 517 Name करहामी देवा

Father's Name नन्दा Resident ग्राम - जबेली
थाना - कुवाकोन्डा

Age 36 Sentenced to आजीवन कारावास on 21.9.96

Under Section 302 I.P.C. by S.J. Jagdalpur, Bastar.

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to legal practitioner who should appear.

1. Date of application for copy of Judgement :- Nil
2. Date of which copy received :- 21.9.96
3. Date on which appeal sent :- 22.10.96
4. Whether the prisoner wished to be represented or not :- Yes / No.

High Court of Madhya Pradesh
JABALPUR
Date 18 FEB 97
Registration No. 600
Receipt Clerk
High Court, Jabalpur

No. 517 Name करहामी देवा S/o नन्दा

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 447 / अपराध / Dated 22 / 10 / 96

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

अधीक्षक
जिला जेल प्रथम श्रेणी

Superintendent-Central / Distt / Sub-Jail.

Date of receipt in C. J. M. Office. 14.1.97

Date of receipt of record to accompany. —

Memo of Appeal of the Appellate Court. —

No. 2(12) dated 15/1/97

Forwarded to the Hi'ble Sessions Judge JDR

C. R. MAGISTRATE 15-1-97
मुख्य न्यायिक दण्डाधिकारी

Date of receipt in Applieate Court

(13)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.131/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -
HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.
31-1-2006

Shri H.B. Agrawal, Sr. Advocate with Miss Sangeeta Mishra, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO,J

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality of the judgment of conviction and order of sentence dated 21st September 1996 passed by learned Sessions Judge, Jagdalpur in S.T. No.92/94 whereby learned Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing murder of Kalmumi Nanga, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 12-1-94 PW-2 Kalmumi Hunga lodged the report (Ex.-P/3) in the police station Kuankonda to the effect that his father Kalmumi Nanga and accused Kartami Deva were co-brothers. His father constructed a house on the land of accused Kartami Deva and on account of that some dispute was going on between his father and the accused, as the accused used to asked his father to vacate the land. In the morning, quarrel took place between the accused and the deceased regarding money. At about 9 a.m. Kartami Deva asked his father for going to the pond for taking bath.

[पीछे देखिये

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

When he saw that the accused was taking bow and arrow along with him, he became suspicious as to why he is taking bow and arrow with him. He also followed the accused and his father. In the forest, the accused shot his father with bow which hit on the chest of his father and he fell down as the arrow pierced into the body of his father. Seeing this he came running to his house and informed his mother, uncle Lakhma and others that the accused has shot his father with arrow. On hearing this, they left towards the place of occurrence where Kalmumi Nanga had already dead. Thereafter, the body of his father was brought to their house. On receiving this report, S.H.O. police station registered F.I.R. (Ex.-P/3), left for the scene of occurrence, after giving notice Ex.-P/8 to the Panchas, prepared Panchanama Ex.-P/9 of the dead body of Kalmumi Nanga. The dead body of Kalmumi Nanga was sent for postmortem examination to the Primary Health Centre, Kuankonda where Dr. R.A. Khan conducted the postmortem on the body of Kalmumi Nanga and prepared the postmortem report Ex.-P/1. The accused while in the police custody gave a memorandum Ex.-P/4 regarding the place where he had kept bow and arrow and in pursuance of the information given by the accused bow and arrow were taken into possession under Ex.-P/5. The plain soil and blood stained soil were taken into possession from the place of occurrence under Ex.-P/6. Merg intimation Ex.-P/7 was given by Kalmumi Hunga.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Dantewada who in turn committed the case to the Sessions Judge, Jagdalpur for trial.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish the charge against the accused examined 5 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence appearing against him. Learned Sessions Judge after hearing arguments of Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Kalmumi Nanga is not in dispute.

As far as involvement of the accused/appellant in committing murder of Kalmumi Nanga is concerned, PW-2 Kalmumi Hunga, son of the deceased, has stated that his father had constructed a house on the land of the accused and on account of that there was some dispute between the accused and his father. In the same morning, the accused quarreled with his father. At about 10 a.m. the accused asked his father for going to pond for taking the bath. When his father and accused Deva were going towards the pond for taking bath, the accused also took along with him bow and arrow that made him suspicious as to why the accused is carrying bow and arrow along with him. He also followed his father. On the way, he saw that the accused shot his father on the chest with arrow which pierced into chest of his father. He immediately rushed to his residence and informed his mother, Jagra, Lakhma, and Nanda that the accused has shot with arrow to his father, on which all the persons went to scene of occurrence and saw that Kalmumi Nanga was lying dead. Therefore, they brought the dead body of Kalmumi Nanga to

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the residence and Panchayat was convened where Panchayat enquired from the accused. The accused made extra judicial confession before the Panchayat that he has shot dead the deceased Kalmumi Nanga with arrow upon which report (Ex.-P/3) was lodged by him in the police station.

PW-4 Kalmumi Bheema has corroborated the above evidence and stated that the accused made extra judicial confession before Panchayat that he shot dead Kalmumi Nanga with arrow.

Learned counsel for the accused/appellant argued that as per the evidence of PW-4 Kalmumi Bheema it is established that the accused made extra judicial confession on account of threat given by Kotwar, therefore, extra judicial confession made by the accused cannot be taken into consideration.

But, we are of the considered opinion that even if the fact of extra judicial confession is not taken into account, from the evidence of PW-2 Kalmumi Hunga who witnessed the crime in question, it is established that the accused was the author of the crime in question.

In view of the above, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused for committing murder of Kalmumi Nanga. Therefore, the appeal fails and same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Barve

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